IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1648 of 2000

For Approval and Signature:

HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KALAWATI @ KALABEN N TRIVEDI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 1648 of 2000

MS SADHANA SAGAR for Petitioner No. 1

MR PRADIP D BHATE A.G.P. for Respondent No. 1

MR AY KOGJE for Respondent No. 2-3

CORAM : HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 29/03/2004

ORAL JUDGEMENT

The grievance of the petitioner is that though she has been working on part time basis, her service has

not been regularized.

1.1. From the record of the petition, it appears that the petitioner was appointed as Child Welfare Officer by order dated 27th August, 1973 at a fixed salary of Rs.45=00 per month. It appears that at the time the petition was filed she was still in service and she was drawing fixed salary of Rs.300=00 per month. It is her say that as she was working as part timer and despite repeated request, her service has not been regularized. She also states that she had done correspondence with the various authorities including the Chief Secretary of the Government of Gujarat, but the respondents did not accede to her request. She had, therefore, no other alternative but to approach this Court under Article 226 of the Constitution of India by way of this petition.

1.2. According to her, the post was permanent one. It appears that despite interim relief operating in favour of the petitioner, directing the respondents to maintain status-quo regarding the service condition of the petitioner, she was relieved from the service vide order dated 26th September, 2003. The petitioner, therefore, moved an application being Civil Application No. 1375 of 2004 for amendment in the petition and to challenge the order of dismissal also in this petition. The said Civil Application was granted and necessary amendment has been carried out by the petitioner in this petition.

1.3. First of all her challenge to the order of termination of her service is required to be considered. The say of the petitioner is that when this Court has protected her service, it was not open for the respondents to terminate her service and thereby, to flout. The order of this Court amending the petition shows that at the time, the impugned order regarding termination of service is passed, interim relief granted in favour of the petitioner was being in operation and no permission to terminate the service of the petitioner seems to have been obtained from this Court. It, therefore, appears that the petitioner's service though protected by this Court was brought to an end by the respondents vide order dated 26th September, 2003.

2. This matter has come up for hearing on other previous occasions. Mr. A.Y. Kogje learned advocate appearing for the respondents has never remained present. Today also, he is not present. No further affidavit has been filed by the respondents to the amended petition. Thus, the submission regarding wrongful termination of the service remains uncontroverted and hence her request

for quashing the said order is required to be accepted. The said order of termination of service dated 26th September, 2003 is ordered to be quashed and set aside.

3. So far as the second grievance is concerned, it is with regard to the regularization of service.

2.1. The question regarding regularization of service on temporary or part time employee who has put in number of years of service has been considered and decided by this Court in Special Civil Application No. 8917 of 1998 and its cognate matters by judgment dated 17th February, 2004. In view of the said judgment, this petition deserves to be allowed with the following directions :-

The respondents are, therefore, now required to be directed that irrespective of the Circular of 21st August, 1995, they shall consider the case of petitioner for appointment on permanent post in Class-IV and if the permanent posts are found vacant, she shall be appointed on the same in accordance with her claim, in the matter of seniority and the Regulations and if otherwise, she is not ineligible. Appointment should not be denied on the ground of overage or on the ground that it may amount to giving a back-door entry. This exercise to be carried out as early as possible but in any case not later than 30th May, 2004. If need be, the petitioner can make appropriate representation, which will be considered in light of this judgment and in particular, the direction given therein.

The petition is, therefore, partly allowed. Rule is made absolute to the aforesaid extent with no order as to costs.

[AKSHAY H. MEHTA, J.]

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